



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

September 14, 2020

VIA ECF

The Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Jones v. USPS*, 20 Civ. 6516 (VM)

Dear Judge Marrero:

This Office represents the defendants in the above-captioned action. We write respectfully on behalf of the parties pursuant to the Court's September 10, 2020, Order scheduling a hearing in this matter. *See* ECF No. 37.

The parties have conferred and propose the following list of witnesses:

Plaintiffs' Direct Case:

1. Plaintiff Kathy Rothschild will testify about for approximately 45 minutes about the topics covered in her declaration, specifically her experience as an individual voting abroad. *See* ECF No. 19-13.
2. Mr. Mark Jamison will testify for approximately 45 minutes about the topics presented in his declarations to the Court, specifically the operations of the USPS. *See* ECF Nos. 19-2, 38-1.
3. Ms. Julia Bryan, the Global Chair of Democrats Abroad, will testify for approximately 45 minutes about the various issues faced in this election cycle by voters abroad, as well as the impact of USPS slowdowns on the ability of international voters to cast their ballots.
 - a. **Defendants' Position:** Defendants object to this witness's appearance at the hearing because they did not submit a declaration in support of plaintiffs' motion for a preliminary injunction, and the witness's identity was not disclosed to defendants until today. In the alternative, defendants request that the Court direct plaintiffs to provide a declaration explaining what this witness will testify about by noon on Tuesday, September 15, 2020. The

purpose of this request is to ensure an orderly presentation of evidence to the Court.

- b. **Plaintiffs' Position:** There is no requirement in the Federal Rules or in the Court's Order setting this hearing that plaintiffs submit a declaration.
- Plaintiffs have given defendants notice of the intent to call this witness from the moment the Court scheduled the hearing, and offered to provide additional details as a courtesy if defendants did not make objections of this kind. There is nothing disorderly about a witness testifying for the first time at a hearing, and such testimony is offered at evidentiary hearings on preliminary injunctions routinely. Similarly, there is no basis to essentially allow defendants to conduct discovery by ordering a *sworn* preview of testimony be generated solely for the purpose of helping defendants prepare for cross examination.
4. Mr. Carlos Barrios will testify for approximately 45 minutes about the topics presented in his declaration to the Court, specifically the visit of Representative Joaquin Castro to the USPS San Antonio Processing and Distribution Center on August 19, 2020. *See* ECF No. 19-5.
5. Plaintiffs propose Postmaster General DeJoy testify as a witness about his time running USPS and the matters covered in his Hill testimony. On Friday, September 11, 2020, Plaintiffs provided a subpoena for the testimony of Postmaster General Louis DeJoy to the undersigned counsel for Defendants, who confirmed that they accepted service of the subpoena on behalf of Postmaster General DeJoy in his official capacity, while preserving all procedural and substantive objections to the subpoena itself. Defendants oppose the proposed appearance of Postmaster General DeJoy at the September 16, 2020, hearing. The parties have been attempting to resolve this issue, which may necessitate motion practice.

Plaintiffs Have Requested the Opportunity to Cross-Examine the Following Witnesses:

6. Mr. Robert Cintron will testify for approximately 45 minutes about the topics presented in his declaration to the Court, specifically the operations of the USPS. *See* ECF No. 33.
7. Mr. Justin Robert Glass will testify for approximately 45 about the topics presented in his declaration to the Court, specifically the USPS's delivery of election mail. *See* ECF No. 28.
8. Ms. Angela Curtis will testify for approximately 45 minutes about the topics presented in her declaration to the Court, specifically the operations of the USPS. *See* ECF No. 30.

Defendants reserve the right to call any individual that submitted a declaration in opposition to plaintiffs' motion for a preliminary injunction motion for rebuttal purposes, or if the Court has any questions for these individuals. Plaintiffs object to this to the extent Defendants intend to

use any witness as part of their case in chief.

The parties have agreed that all documents, including declarations and exhibits to declarations, filed on the docket of this case may be relied upon as the record for decision on plaintiffs' motion for a preliminary injunction. The parties otherwise reserve all arguments to be made about such materials, including, but not limited to, arguments going to evidentiary weight or legal arguments. Defendants, on consent, intend to file one additional declaration from an attorney prior to the hearing attaching as an exhibit updated USPS performance data provided to plaintiffs on Saturday, September 12, 2020. On Friday, September 11, 2020, Plaintiffs sent a subpoena to the undersigned counsel for documents. Defendants oppose the subpoena, and this may lead to motions practice.

The parties thank the Court for consideration of this submission.

Respectfully,

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